IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.MC.No. 2193 of 2007()

(AGAINST THE ORDER DATED 02/06/2007 IN CRMP. 2336 /2007 IN CC.63/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM)

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PETITIONER: ACCUSED

K.RADHAKRISHNAN,S/O.KUMARASWAMY,
PRIYANIVAS,VADAYATTUCOTTA,
VADAKKUMBHAGAM CHERRY, KOLLAM.

BY ADV. SRI.K.S.MANU (PUNUKKONNOOR)
SRI.P.SREEKUMAR

RESPONDENTS: COMPLAINANT

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1. M/S BUSINESS CHITTY FUNDS (ASRAMAM)
PVT LTD.,HAVING ITS ADMINISTRATE OFFICE AT
BUSINESS BUILDING, BEACH ROAD, KOLLAM.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2193 Of 2007

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Dated this the 9th day of July, 2007

ORDER

The petitioner faces indictment in a prosecution under 138 Negotiable Instruments Act. The signature in the cheque is admitted. The contention raised is that a blank signed cheque was mis-utilised to make entries regarding the date, amount etc. The trial is in progress. At the defence stage, the petitioner wanted the cheque to be sent to the expert. The obvious purpose was to make an attempt to ascertain the relative age of the admitted signature in the cheque and the other disputed writings.

2. The learned Magistrate, by the impugned order, rejected the prayer. The petitioner claims to be aggrieved by the said order. He prays that the powers under Section 482 Cr.P.C. may be invoked to quash Annexure A4 order and to direct the examination of the cheque by an expert. I must alertly remand myself of the nature,quality and contours of the jurisdiction which I am called upon to invoke and exercise. The jurisdiction which is sought to be invoked is the extraordinary inherent jurisdiction available under Sec.482 Cr.P.C. It is by now trite that such jurisdiction has to be invoked sparingly and in exceptional cases only in aid of justice. Such jurisdiction is certainly

not to be invoked as a matter of course. Even the fact that an order passed is wrong or a better order could have been passed will not persuade the court to invoke the extraordinary inherent jurisdiction. Has there been failure of justice or an abuse of process of the Court? This is the crucial question which will have to be considered in proceedings under Sec.482 Cr.P.C.

3. The law frowns upon attempts to challenge the interlocutory orders before the superior Courts during the pendency of the prosecution. This policy of the law is clearly reflected in Sec.397(2) Cr.P.C. which proscribes revisional challenge against interlocutory orders. In a fit case, notwithstanding the bar under Sec.397(2) Cr.P.C, this Court may and can be persuaded to invoke the extraordinary inherent jurisdiction if it is satisfied that failure of justice would result if such powers are not invoked. But normally the interlocutory orders which are passed in the course of the proceedings must wait for their challenge till final disposal of the proceedings. They can be challenged along with the final orders, if necessary after culmination of the proceedings. Even assuming that there is an error or impropriety committed by the Subordinate Court while disposing of the interlocutory orders that will not be sufficient to and cannot certainly persuade this Court to invoke the extraordinary inherent jurisdiction.

Having considered all the relevant inputs, I am of the opinion that there is no scope for the invocation of the inherent jurisdiction under Section 482 Cr.P.C. in the facts and circumstances of this case.

4. I am satisfied that this is an eminently fit case where the court below must be permitted to complete the trial expeditiously. Challenge if any, against the impugned order can be raised along with the challenge, if any, against the judgment to be passed in the prosecution by the learned Magistrate.

5. In the result this Crl.M.C. is dismissed. I may hasten to observe that I have not intended to express any final opinion on the disputed questions which were considered in the impugned order. I make it clear that the petitioner's right to challenge the impugned order, if any, along with the final order shall remain unfettered by the dismissal of this Crl.M.C.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE